STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 20,959
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Health Access Eligibility Unit (HEAU) finding her son ineligible for Disabled Children's Home Care (DCHC or "Katie Beckett") benefits under Medicaid. The issues are whether the petitioner's son meets the Medicaid childhood definition of disability and, if so, whether he meets the additional medical eligibility requirements of the Katie Beckett program.

FINDINGS OF FACT

1. The petitioner's son is nine years old. In January 2007 he was admitted to the Brattleboro Retreat for ten days following an episode of violent behavior in his home.

2. The only detailed recent medical evidence in the record is the testing and treatment records from his stay at the Brattleboro Retreat. Those records include the following remarks in his discharge summary:

> [M] initially presented with increased aggression. On the inpatient unit he was placed on intermittent

observations with 15 minute checks for assault risk and self harm. He was cooperative with a bright affect and friendly demeanor. Staff worked with him to develop a plan to deal with his anger. He said he punched himself in the stomach at home to try to make the anger go away. He appeared remorseful for past aggressive behaviors. He talked very fondly of his younger sister despite being annoyed by some of her behaviors. He was quite sensitive about "friends." He would become upset (not aggressive) when someone he perceived as a special friend would play with another child. He attended and participated in the children's groups which included safety planning, art therapy, movement therapy, anger management, various good citizenship groups, and therapeutic activity groups. He became anxious when a peer tried to assault staff. He played well with peers and worked hard at ignoring the negativity of some of his peers. He was generally not aggressive but occasionally followed the lead of disruptive patients. He did push a peer once during a game when he was trying to be first.

Regarding medications, he was admitted on Ritalin twice daily. After conversations with his outpatient pediatrician and his parents he was started on Risperdal to help manage the aggressive behaviors. The Ritalin was discontinued and a Concerta trial was instituted with three different stages. He was given Concerta 18 mg for three days, Concerta 35 mg for four days, then no Concerta for two days. There was a noticeable difference on the Concerta 36 mg. He appeared much more fidgety and more difficult to redirect. Although there was little difference between the 8 mg and no Concerta he did seem slightly more impulsive without the Concerta.

FINAL DIAGNOSES

Axis I: Mood Disorder, not otherwise specified
Attention Deficit Hyperactivity Disorder, Hyperactive/Impulsive Subtype

II: Deferred

III: No Diagnosis

IV: Family and School

V: 45

CONDITION ON DISCHARGE

Patient denied suicidal ideation and homicidal ideation. There was no evidence of psychosis. He was tolerating his medications without side effects.

PROGNOSIS

Guarded although he has not been significantly aggressive here he continues to exhibit low frustration tolerance.

ARRANGEMENTS FOR AFTERCARE SERVICES

Patient was discharged home to his parents. His discharge medications are:

- Risperdal 0.25 mg every morning and 1 mg every bedtime

- Concerta 18 mg every morning.

He was given prescriptions for a 30 day supply of each medication. Dr. [R.N.], his pediatrician, will manage his medications until a psychiatrist is available through Lamoille County Mental Health. There is an appointment for family therapy with [K.U.] on February 9th. There is an intake appointment scheduled at Lamoille County Mental Health on February 14th. They will provide individual therapy, in home services, respite care, and psychiatry. [M] will return to the [name] Elementary School. [C.F.], the school counselor, will work on the Katie Beckett Medicaid application with [M's] parents for access to additional services.

ORDER

The Department's decision is affirmed.

REASONS

The DCHC or Katie Beckett program provides more liberal *financial* eligibility criteria for Medicaid benefits to certain children with extraordinary medical needs. However, to be considered eligible for Katie Beckett a child must *first* meet the Medicaid definition of disability for children under eighteen. The definition of childhood disability for Medicaid is essentially the same as for the federal SSI program. W.A.M. § M211.2 includes the following definition:

> Children under age 18 are considered disabled if they have a medically determinable physical or mental impairment, or combination of impairments, resulting in marked and sever functional limitations, that can be expected to result in death or that have lasted or can be expected to last for at least 12 consecutive months. Children engaging in substantial gainful activity may not be considered disabled.

The Department has determined that the petitioner's son does not meet federal SSI criteria for having "marked" or "extreme" symptoms and behaviors resulting from his diagnosed disorders. 20 C.F.R. § 416.926(a). For mental impairments, the federal regulations discus six areas or "domains" in which severe functional limitations must be present: acquiring and using information, attending and completing tasks, interacting and relating with others, moving about and manipulating objects, self care, and health and physical

well-being. The medical evidence of record does not contradict the Department's assessment that the petitioner's son shows marked limitations only in the area of attending and completing tasks, which is insufficient under the regulations to support a determination of disability.

At the hearing in this matter, held on July 25, 2007 the hearing officer informed the petitioner that even if she could submit additional medical evidence that would overcome the Department's decision regarding Medicaid disability, there appeared to be little, if any, indication in the record that her son could medically qualify for Katie Beckett. Inasmuch as the petitioner's son is under eighteen, he *categorically* would qualify for Medicaid on this basis, *regardless of disability*. However, the petitioner concedes that her family is well over income to *financially* qualify for Medicaid. For this reason, the parties agreed that the Board should more fully analyze the medical evidence in light of his eligibility for Katie Beckett, because unless it could be determined that the petitioner's son would *ultimately* qualify for Katie Beckett, further pursuit of disability-based Medicaid, in and of itself, would be pointless.

To qualify for the Katie Beckett program it must be shown that a disabled child requires a continuing level of

medical and/or personal care that is more-appropriately provided by a hospital, nursing home, or intermediate care facility for the mentally retarded (ICF-MR), and that such care can be provided in the child's home at no greater cost than in an appropriate institution. See W.A.M. § 200.23. The stated goal of the program is to encourage and support families to provide home-based care for children who would otherwise be in an institution.

In this case there is no evidence, or even a suggestion on the part of the petitioner or any of her son's care providers, that institutional care would be, or is foreseeably likely to be, necessary or appropriate for the petitioner's son on an ongoing basis. At the hearing, the hearing officer advised the petitioner that she and her son might well have rights under special education law to the extent that her son may need services or accommodations in order to receive a free and appropriate education. However, based on the diagnoses and recommendations of his medical providers, it does not appear that the petitioner's son comes anywhere near the criteria for qualifying for Katie Beckett at this time, even if he were found to meet the Medicaid criteria of disability.

Thus, the Department's decision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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